

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF THE CENTRAL STEEL
DRUM SUPERFUND SITE,

Marian Abrams and Jane Mattson,

Respondents.

Proceeding Pursuant to Section
122(h)(1) of the Comprehensive
Environmental Response, Compensation,
and Liability Act,
42 U.S.C. § 9622(h)(1)

COST RECOVERY AGREEMENT
INDEX NUMBER 3
CERCLA-02-2003-2081

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA and then redelegated to the Director of the Emergency and Remedial Response Division by EPA Delegation No. 14-14-D.

2. This Agreement is made and entered into by Marian Abrams and Jane Mattson ("Settling Parties") and EPA. Each Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Central Steel Drum Superfund Site ("Site") located in Newark, New Jersey. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. In March 1997, EPA began response actions at the Site. EPA conducted sampling at the Site, cleared debris, and transported and disposed of hazardous substances from the Site.

5. In performing these response actions, EPA incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred at or in



connection with the Site.

7. EPA and Settling Parties desire to resolve Settling Parties' alleged civil liability relating to the Site without litigation and without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

8. This Agreement shall be binding upon EPA and upon each Settling Party and their heirs, successors and assigns. Any transfer of assets or real or personal property of a Settling Party, shall in no way alter such Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Agreement" shall mean this Agreement.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Financial Information" shall mean that financial information that the Settling Parties submitted to EPA or the United States Department of Justice in response to requests for such information.

f. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and the Settling Parties.

i. "Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid or will pay at or in connection with the Site.

j. "Section" shall mean a portion of this Agreement identified by a roman numeral.

k. "Settling Parties" shall mean Marian Abrams and Jane Mattson.

l. "Site" shall mean the Central Steel Drum Superfund Site, located at 704 Doremus Avenue, (Block 5974, Lot 1) Newark, Essex County, New Jersey.

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

10. Within 30 days of the effective date of this Agreement, the Settling Parties shall pay to the EPA Hazardous Substance Superfund \$18,000.00 in reimbursement of Response Costs.

11. The Settling Parties shall make the payment via electronic funds transfer ("EFT") to EPA's account at Mellon Bank. To effect this payment via EFT, the Settling Parties shall provide the following information to payor's bank:

Amount of payment:

Title of Mellon Bank account to receive the
payment. EPA

Account code for Mellon Bank receiving the payment: 9108544

Mellon Bank ABA routing number: 043000261

Name of remitter: *****

Case No.:

Site identifier: 02JR

Along with the above information, the Settling Parties shall instruct the payor's bank to remit payment in the agreed upon amount via EFT to EPA's account with Mellon Bank.

12. To ensure that the payment is properly recorded, the Settling Parties should send a letter, within one week of the EFT, which references the date of the EFT, the payment amount, the name of the site, the case number, and their names and addresses to the following:

Central Steel Drum Site On-Scene Coordinator
U.S. Environmental Protection Agency
2890 Woodbridge Avenue
Edison, NJ 08837-3679

Attorney for the Central Steel Drum Site
New Jersey Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 17th Floor
New York, NY 10007-1866

Donna Vizian, Chief
Financial Management Branch
U.S. Environmental Protection Agency
290 Broadway - 29th Floor
New York, NY 10007-1866

VI. FAILURE TO COMPLY WITH AGREEMENT

13. In the event that the payment required by Paragraph 10 is not made when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

14. If the amounts due to EPA under Paragraph 10 are not paid by the required date, Settling Parties shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$750 per violation per day that such payment is late.

15. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraphs 11 and 12.

16. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment pursuant to Section V is due, and shall continue to accrue through the day of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this Agreement, any Settling Party who fails or refuses to comply with any term or condition of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs

of attorney time.

18. The obligations of Settling Parties to pay amounts owed to EPA under this Agreement are joint and several. In the event of the failure of one Settling Party to make the payment required under this Agreement, the remaining Settling Party shall be responsible for such payment.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Parties' payment of stipulated penalties shall not excuse Settling Parties from payment as required by Paragraph 10.

VII. COVENANT NOT TO SUE BY EPA

20. a. Except as specifically provided in Paragraph 20.b. and Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section V (Reimbursement of Response Costs), Section VI, Paragraph 13 (Interest on Late Payments), and, if demanded by EPA, Paragraph 14 (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

b. EPA's covenants under Paragraph 20.a. of this Agreement are conditioned upon the accuracy, veracity, and completeness of the Financial Information provided by each of the Settling Parties to EPA. If the Financial Information is subsequently determined to have been misleading, false, or materially inaccurate at the time it was provided by Settling Parties, the Settling Parties shall forfeit all payments made pursuant to this Consent Decree and EPA's covenant not to sue and the contribution protection in Paragraph 27 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from any Settling Party's misleading, false or materially inaccurate information.

VIII. RESERVATIONS OF RIGHTS BY EPA

21. The covenant not to sue by EPA set forth in Paragraph 20.a. does not pertain to any matters other than those expressly identified therein. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, all rights against Settling Parties with respect to all other matters, including but not limited to:

a. liability for failure of Settling Parties to meet a

requirement of this Agreement;

b. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

c. criminal liability;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. liability based upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or solid waste at or in connection with the Site, after signature of this Agreement; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

22. a. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement, if the Financial Information provided by Settling Parties, or the financial certification made by Settling Parties in Paragraph 32(d) is misleading, false, or materially inaccurate.

b. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTIES

23. Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including but not limited to any claim under the United States Constitution, the New Jersey Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

24. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

25. The Settling Parties agree not to assert any claims and to waive and release all claims or causes of action that they may have relating to the Site, including for contribution, against any person where the person's liability to the Settling Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, respectively, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials at the Site, respectively. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. a. Except as provided in Paragraph 25, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

b. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Agreement do not constitute an admission of any liability by either Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

27. The Parties agree that Settling Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Response Costs and response actions at the Site.

28. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

29. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 20.a.

XI. RETENTION OF RECORDS

30. Until five (5) years after the effective date of this Agreement, each Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate or other retention policy to the contrary.

31. After the conclusion of the document retention period in the preceding paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Settling Parties shall deliver any such records or documents to EPA. Settling Parties may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to EPA in

redacted form to mask the privileged information only. Settling Parties shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor.

XII. CERTIFICATION

32. By signing this Agreement, each Settling Party certifies individually that, to the best of her knowledge and belief, she has:

a. conducted a thorough, comprehensive, good faith search, and has fully and accurately disclosed to EPA, all requested information currently in her possession, or that of her agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site;

c. fully complied with any and all EPA requests for information regarding the Site and the financial affairs of the Settling Parties pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e); and

d. submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Parties execute this Agreement.

XII. NOTICES AND SUBMISSIONS

33. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Parties.

As to EPA:

Central Steel Drum Site On-Scene Coordinator
U.S. Environmental Protection Agency
2890 Woodbridge Avenue
Edison, NJ 08837-3679

Please also provide a copy to:

Central Steel Drum Site Attorney
New Jersey Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

As to Settling Parties:

Anthony Reitano, Esq.
Herold and Haines, P.A.
25 Independence Boulevard
Warren, New Jersey 07059

XIII. INTEGRATION

34. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

XIV. PUBLIC COMMENT

35. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XV. ATTORNEY GENERAL APPROVAL

36. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVI. EFFECTIVE DATE

37. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 35 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: William M. Calk
George Pavlou
Director, Emergency and
Remedial Response Division
Region 2

5/29/03
[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in In the Matter of the Central Steel Drum Superfund Site, U.S. EPA Docket Number 02-2003-2001, relating to the Central Steel Drum Superfund Site, located in Newark, New Jersey:

FOR SETTLING PARTY: Marian Abrams

4324 TROOST AVE #101

[Address]

STUDIO CITY, CA 91604

By: 

[Name]

4/25/03

[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in In the Matter of the Central Steel Drum Superfund Site, U.S. EPA Docket Number 02-2003-2001, relating to the Central Steel Drum Superfund Site, located in Newark, New Jersey:

FOR SETTLING PARTY: Jane Mattson

[Address]

By: _____

[Name]

[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in In the Matter of the Central Steel Drum Superfund Site, U.S. EPA Docket Number 02-2003-2001, relating to the Central Steel Drum Superfund Site, located in Newark, New Jersey:

FOR SETTLING PARTY: Marian Abrams

[Address]

By: _____

[Name]

[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in In the Matter of the Central Steel Drum Superfund Site, U.S. EPA Docket Number 02-2003-2001, relating to the Central Steel Drum Superfund Site, located in Newark, New Jersey:

FOR SETTLING PARTY: Jane Mattson

153 Belcher Drive
[Address]

Sudbury, MA 01776

By: _____

[Name]

April 25, 2003
[Date]